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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,846	05/21/2001	Richard C. Darr	65600-0054	2060

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EXAMINER

MCDOWELL, SUZANNE E

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/862,846

Applicant(s)

DARR ET AL.

Examiner

Suzanne E. McDowell

Art Unit

1732

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. (35 U.S.C. § 133).
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### DETAILED ACTION

#### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 12-27, drawn to a method, classified in class 264, subclass 521.
  - II. Claims 28 and 29, drawn to an article, classified in class 428, subclass 36.9.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using can be practiced with another and materially different product, one which is formed by injection molding.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with John Guenther on July 23, 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 12-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28 and 29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck et al. (US Patent 6,126,886). Beck et al. discloses the claimed limitations as follows: providing a preform (5); blow molding the preform to an intermediate article (14) (Fig. 2) with an accommodation element (10), i.e., upper discard portion, a generally cylindrical body (2), and a closed base (3); severing the accommodation element (10) from the intermediate article (14) to form a wide mouth container (1) which has biaxial orientation and heat set throughout including the mouth portion (4) and formed screw threads (12) (column 4, lines 34-40). One embodiment discloses that the mouth portion (4) is further mechanically processed to include curling the edge of the mouth, wherein the die (20) can sequentially heat and cool the rim portion during curl formation, i.e. heat-treating. (column 6, lines 45-54). Beck et al. thereby discloses all of the limitations of claims 21-27.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck et al. (US Patent 6,126,886) in view of Akutsu (US Patent 4,293,520). Beck et al. teaches the basic method as follows: providing a preform (5); blow molding the preform to an intermediate article (14) (Fig. 2) with an accommodation element (10), i.e., upper discard portion, a generally cylindrical body (2), and a closed base (3); severing the accommodation element (10) from the intermediate article (14) to form a wide

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mouth container (1) which has biaxial orientation and heat set throughout including the mouth portion (4) and formed screw threads (12) (column 4, lines 34-40). One embodiment discloses that the mouth portion (4) is further mechanically processed to include curling the edge of the mouth, wherein the die (20) can sequentially heat and cool the rim portion during curl formation, i.e. heat-treating. (column 6, lines 45-54).

Regarding claim 12, Beck et al. does not teach that the preform is formed by molding at least a portion of a sheet against a mold surface to form a preform, and separating the preform from the sheet. Akutsu teaches a method of making a container by blow molding a parison, including the steps of: forming a parison (2) from a sheet (1) by securing the sheet to a mold (5) and retainer (7); stretching the sheet on a mold core (6); and cutting the parison (2) from the remainder of the sheet by a shoulder (6') of the core (6). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the method taught by Akutsu to form the preform to be used in the method taught by Beck et al., in order to form a container with biaxial orientation throughout the container.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kawaguchi et al. (US Patent 4,420,454).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne E. McDowell whose telephone number is (703) 305-4018. The examiner can normally be reached on M-F 6:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on (703) 305-5493. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

SEM  
August 11, 2003

  
SUZANNE E. MCDOWELL  
PRIMARY EXAMINER